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# State v. Lawrence Respondent's Brief Dckt. 43462

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43462
Plaintiff-Respondent,	)	
	)	Bonneville County Case No.
v.	)	CR-2013-15791
	)	
ROBERT ALEXANDER LAWRENCE,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Lawrence failed to establish that the district court erred by denying his Rule 35 motion for correction of an illegal sentence?

Lawrence Has Failed To Show Error In The District Court's Denial Of His Rule 35  
Motion For Correction Of An Illegal Sentence

In 2013, pursuant to a plea agreement, Lawrence pled guilty (in this case) to robbery, second degree kidnapping, and burglary, and the state agreed not to file additional charges and to recommend concurrent sentences with no more than five years determinate on each count. (42212 R., pp.150-56.) The district court imposed

concurrent unified sentences of 35 years, with eight years fixed, for robbery; 25 years, with eight years fixed, for second degree kidnapping; and 10 years, with three years fixed, for burglary. (42212 R., pp.169-72.) Lawrence filed a timely Rule 35 motion for reduction of sentence, which the district court denied. (42212 R., pp.175-76, 183.) Lawrence appealed and the Idaho Court of Appeals affirmed Lawrence's convictions and sentences and the district court's order denying Lawrence's Rule 35 motion for reduction of sentence.<sup>1</sup> State v. Lawrence, 2015 Unpublished Opinion No. 544, Docket Nos. 42211, 42212 and 42423 (Idaho App, July 9, 2015).

In May 2015, Lawrence filed a Rule 35 motion for correction of an illegal sentence, which the district court denied. (43462 R., pp.28-35, 57-58.) Lawrence filed a notice of appeal timely only from the district court's order denying his Rule 35 motion for correction of an illegal sentence. (43462 R., pp.59-62.)

Mindful "of the language of the plea agreement and of I.C. § 19-2513," Lawrence nevertheless argues that the district court erred by denying his Rule 35 motion for correction of an illegal sentence because the court exceeded the five-year fixed portion of the sentences recommended by the state as part of the non-binding plea agreement, and because, he claims, "his fixed terms for robbery and kidnapping exceed the statutory maximum." (Appellant's brief, pp.5-7.) Lawrence has failed to show error in the denial of his Rule 35 motion for correction of an illegal sentence.

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<sup>1</sup> Lawrence's first appeal (Docket number 42212) in this case (Bonneville County case number CR-2013-15791) was consolidated with his appeals in Bonneville County case numbers CR-2013-16227 (Docket number 42211) and CR-2013-15787 (Docket number 42423). The Idaho Court of Appeals affirmed Lawrence's convictions and sentences and the district court's orders denying Lawrence's Rule 35 motions for reduction of sentence in all three cases. State v. Lawrence, 2015 Unpublished Opinion No. 544, Docket Nos. 42211, 42212 and 42423 (Idaho App, July 9, 2015).

Pursuant to Idaho Criminal Rule 35, a district court may correct a sentence that is “illegal from the face of the record at any time.” In State v. Clements, 148 Idaho 82, 87, 218 P.3d 1143, 1148 (2009), the Idaho Supreme Court held that “the interpretation of ‘illegal sentence’ under Rule 35 is limited to sentences that are illegal from the face of the record, i.e., those sentences that do not involve significant questions of fact nor an evidentiary hearing to determine their illegality.” An illegal sentence under Rule 35 is one in excess of a statutory provision or otherwise contrary to applicable law. State v. Alsanea, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003).

The plea agreement in this case provided, in relevant part:

Each party is free to argue regarding sentencing except that the State shall recommend that each count run concurrent with each other, and the [sic] shall recommend incarceration with Idaho Department of Corrections with no more than five (5) years determinate on each count, but is free to argue the indeterminate sentence, on each count.

...

This agreement is made pursuant to I.C.R. 11(f)(1)(B) and is not intended to be binding unless accepted by the Court. If the Court rejects this plea agreement, the defendant acknowledges that he nevertheless has no right to withdraw his plea.

(42212 R., p.153.) On appeal, Lawrence acknowledges that “the plea agreement only binds the State to recommend concurrent five year determinate sentences, and that the agreement states that it is not binding on the court ‘unless accepted’ by the Court.” (Appellant’s brief, p.6.) At sentencing, in accordance with the plea agreement, the state recommended that the court impose concurrent sentences with determinate terms of only five years. (1/27/14 Tr., p.22, L.24 – p.23, L.16.) Pursuant to the plain language of the plea agreement, the district court was not bound to accept the state’s recommendations. (42212 R., pp.152-56.) The district court imposed concurrent

sentences of 35 years, with eight years fixed, for robbery; 25 years, with eight years fixed, for second degree kidnapping; and 10 years, with three years fixed, for burglary, all of which fall well within the statutory maximums permitted by law. See I.C. § 18-6503 (the penalty for robbery is not less than five years, up to life in prison), I.C. § 18-4504(2) (the penalty for second degree kidnapping is not less than one year, up to 25 years in prison), and I.C. § 18-1403 (the penalty for burglary is not less than one year, up to 10 years in prison). As such, Lawrence has not shown that his sentences were illegal.

Lawrence also asserts that the eight-year fixed portions of his sentences for robbery and second degree kidnapping “exceed the statutory maximum,” because he believes the district court “was obligated to only impose the mandatory minimum of fixed time” specified in I.C. § 18-6503 and I.C. § 18-4504(2). (Appellant’s brief, pp.4, 6-7.) However, as Lawrence acknowledges, “the Court of Appeals has already rejected this argument” in State v. Griffith, 157 Idaho 409, 336 P.3d 816 (Ct. App. 2014). (Appellant’s brief, p.6.) As explained in Griffith, Idaho Code section 19-2513 gives the district court discretion to determine what portion of the sentence *in excess of* the mandatory fixed term will be fixed. Griffith, 157 Idaho at 410, 336 P.3d at 817. Because the penalty for robbery is “imprisonment in the state prison not less than five (5) years, and the imprisonment may be extended to life,” I.C. § 18-6503, the district court was authorized, in its discretion, to distribute Lawrence’s sentence between a fixed term and an indeterminate term within those parameters. I.C. § 19-2513; Griffith, 157 Idaho at 410, 336 P.3d at 817. As such, Lawrence’s unified sentence of 35 years, with eight years fixed, for robbery was consistent with the applicable statutes and not an

illegal sentence. Lawrence's unified sentence of 25 years, with eight years fixed, for second degree kidnapping, which "is punishable by imprisonment in the state prison not less than one (1) nor more than twenty-five (25) years," I.C. § 18-4504(2), was likewise consistent with the applicable statutes and not an illegal sentence.

Because Lawrence's sentences fall within the statutory guidelines, and because the sentences are not otherwise contrary to applicable law, Lawrence has failed to show any basis for reversal of the district court's order denying his Rule 35 motion for correction of an illegal sentence.

#### Conclusion

The state respectfully requests this Court to affirm the district court's order denying Lawrence's Rule 35 motion for correction of an illegal sentence.

DATED this 6th day of July, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of July, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General